



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 29, 1996

Mr. David M. Douglas
Assistant Chief
Legal Services
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-0276

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33749.

The Texas Department of Public Safety (the "department") received an open records request from an attorney for its records reflecting whether any criminal history information inquiries have been made with regard to the requestor's client. For purposes of your request for an open records decision you have incorporated the same arguments that you have previously made to this office in connection with other decision requests. In response to one of those decision requests this office has determined that, contrary to your contentions, departmental records reflecting criminal history information inquiries are not made confidential under section 20.21(g)(6) of title 28 of the Code of Federal Regulations. See Open Records Letter No. 95-1240 (1995). We therefore need not further address those contentions at this time. We will, however, address your claims under section 552.108 of the Government Code.

Section 552.108, known as the "law enforcement" exception, excepts from required public disclosure:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . [and]
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). One of the purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture. See Open Records Decision Nos. 133 (1976), 127 (1976).

This office has previously addressed the applicability of the law-enforcement exception to records reflecting criminal history information inquiries. See, e.g., Open Records Letter No. 95-1240 (1995), Open Records Letter No. 90-310 (1990). As this office observed in Open Records Letter No. 90-310 (1990):

The log [containing records of criminal history information inquiries] contains the date and time of inquiries into an individual's criminal history as well as the identity and employing agency of the law enforcement officer making inquiries. Therefore, release of the logs might alert a suspect to the fact that he is subject to an investigation which might cause the suspect to alter his behavior to avoid pursuit and apprehension.

Although you do not suggest, and we do not mean to imply, that the requestor's client is suspected of any wrong-doing, we nevertheless believe that the above-quoted rationale for withholding the requested information is valid in this instance, regardless of whether or when a criminal history information inquiry was made. It is apparent to this office that the requested information constitutes "an internal record or notation of a law enforcement agency . . . that is maintained for internal use in matters relating to law enforcement or prosecution," the release of which could unduly interfere with law enforcement. See Attorney General Opinion MW-381 (1981). The department therefore may withhold the requested records pursuant to section 552.108 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/RWP/ch

Ref.: ID# 33749

Enclosure: Submitted document

cc: Mr. David B. Street
Attorney at Law
1616 Nantucket Drive
Richardson, Texas 75080
(w/o enclosures)